IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18530 of 2004

Between:

M. Shankar, S/o. M. Narsimha, Age:31 years, occ:Sarpanch.
R/o. Cherlapally Village, Nalgonda Mandal & District.

..... PETITIONER

AND

1. The District Collector, Nalgonda, Nalgonda District.

2. R. Mangamma, w/o. Ramalingam 35 years, Upa Sarpanch, Cherlapally village, Gram Panchayat Cherlapally, Nalgonda District. 9R2 is impleaded as per Court order dated 26-11-2004 in WPMP NO.26051 of 2004

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the impugned proceedings No.491/04-A1(Pts.) dt: 25-09-2004 as arbitrary, illegal and violative of Article 14, 21 of the Constitution of India, consequently, set-aside the same as being violative of principles of Natural Justice.

Counsel for the Petitioner:MR.HARENDER PRASAD

Counsel for the Respondent No.1: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.2: MR S. NIRANJAN REDDY.

The Court made the following :

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ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the first respondent as well as the learned counsel appearing for the 2nd respondent.

This writ petition is filed aggrieved by the proceedings of the first respondent dated 25-9-2004, whereunder the petitioner, who is the Sarpanch of the Cherlapally Gram Panchyat, was placed under suspension for a period of three months in exercise of powers under Section 249(6) of the Andhra Pradesh Panchayat Raj Act, 1994, observing that the five charges framed against him, prima facie, found to be true and appointing an Enquiry Officer to conduct regular enquiry into the said five charges. This court while directing the rule nisi, by order dated 14-10-2004 granted interim suspension of the impugned order. By virtue of the said interim order, the petitioner is being continued in the office.

The learned counsel for the petitioner submits that in response to the show cause notice dated 23-07-2004 received by the petitioner on 23-8-2004, he made a representation dated 04-09-2004 requesting the first respondent to grant 15 days time for submitting an appropriate explanation. Without considering the said request, the first respondent straightaway passed the impugned order placing him under suspension. The learned counsel submits that as a matter of fact, the petitioner was ready with the explanation but he was not afforded an opportunity to submit the same and therefore, the impugned order is arbitrary, illegal and violative of the principles of natural justice.

On a perusal of the impugned order, it is clear that though a show cause notice was issued, the impugned order was passed without considering the version of the petitioner on the ground that he failed to submit his explanation. In the counter-

affidavit filed on behalf of the first respondent, it is stated that the petitioner was allowed 15 days time upto 19-09-2004 and the same was intimated to him by letter dated 20-09-2004, but he failed to avail the opportunity.

However, the petitioner disputes the same and states that no such communication was received by his granting extension of time.

This court cannot investigate into such disputed question of fact and no finding as such can be recorded. However, the fact remains that the impugned order was passed without taking into consideration the explanation of the petitioner. In the circumstances, I am of the view that it would be appropriate to consider the matter afresh after taking into consideration the explanation of the petitioner.

Accordingly, the impugned order dated 25-9-2004, is set aside and the writ petition is disposed of with a direction to consider the explanation of the petitioner filed along with this writ petition at page 32 of the material papers and to pass appropriate orders in accordance with law within a period of one week from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No costs.

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29-12-2004

Note:

CC by two days.

(Bo)

sj

To

1. The District Collector, Nalgonda, Nalgonda District.

2. Two CCs to the Government Pleader for Panchayat Raj and Rural Development, High Court Building, Hyderabad. (OUT)

3. Two C. D. copies.

sj